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BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
MILES SAND AND GRAVEL)
COMPANY, INC.,)
Appellant,)
v.)
PUGET SOUND AIR)
POLLUTION CONTROL)
AGENCY,)
Respondent.)

PCHB No. 79-81

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

THIS MATTER, the appeal of a \$250 civil penalty for emissions allegedly in violation of respondent's Section 9.03(b) of Regulation I (opacity) having come on regularly for formal hearing on the 12th day of October, 1979 in Tacoma, Washington, and appellant, Miles Sand and Gravel Company, Inc., appearing by its owner, Frank L. Miles and respondent, Puget Sound Air Pollution Control Agency, appearing through its attorney, Keith D. McGoffin with William A. Harrison, hearing examiner presiding, and the Board having considered the

1 exhibits, records and files herein, having read the transcript of the
2 proceedings and having reviewed the Proposed Order of the presiding
3 officer mailed to the parties on the 31st day of October, 1979, and
4 more than twenty days having elapsed from said service; and

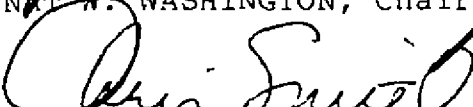
5 The Board having received exceptions to said Proposed Order from
6 the appellant, Frank L. Miles and having considered and denied same;
7 and the Board being fully advised in the premises; NOW THEREFORE,

8 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said Proposed
9 Order containing Findings of Fact, Conclusions of Law and Order dated
10 the 31st day of October, 1979, and incorporated by reference herein
11 and attached hereto as Exhibit A, are adopted and hereby entered as
12 the Board's Final Findings of Fact, Conclusions of Law and Order
13 herein.

14 DATED this 11th day of January, 1980

15 POLLUTION CONTROL HEARINGS BOARD

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17 
18 N. W. WASHINGTON, Chairman

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20 CHRIS SMITH, Member

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I, LaRene Barlin, certify that I mailed, postage prepaid, copies of the foregoing document on the 11th day of January, 1980, to each of the following-named parties, at the last known post office addresses, with the proper postage affixed to the respective envelopes:

Mr. Frank L. Miles
Miles Sand and Gravel Company, Inc.
P. O. Box 130
Auburn, Washington 98002

Mr. Keith D. McGoffin
Rovai, McGoffin and Turner
818 South Yakima Avenue
Tacoma, Washington 98405

Puget Sound Air Pollution Control Agency
P. O. Box 9863
Seattle, Washington 98109

LaRene Barlin
POLLUTION CONTROL HEARINGS BOARD

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
MILES SAND AND GRAVEL CO., INC.

Appellant,

v.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHB No. 79-81

PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

This matter, the appeal of a \$250 civil penalty for emissions allegedly in violation of respondent's Section 9.03(b) of Regulation I (opacity) came on for hearing before the Pollution Control Hearings Board convened at Tacoma, Washington on October 12, 1979. Hearing Examiner William A. Harrison presided alone. Respondent elected a formal hearing pursuant to RCW 43.21B.230.

Appellant appeared by its owner, Frank L. Miles. Respondent appeared by its attorney, Keith D. McGoffin. Reporter Betty Koharski recorded the proceedings.

WAH/cwo

1 Witnesses were sworn and testified. Exhibits were examined.
2 From testimony heard and exhibits examined, the Pollution Control
3 Hearings Board makes these:

4 FINDINGS OF FACT

5 I

6 Respondent, pursuant to RCW 43.21B.260, has filed with this
7 Board a certified copy of its Regulation I containing respondent's
8 regulations and amendments thereto, of which official notice is taken.

9 II

10 Appellant owns a concrete ready mix plant in Kent. The facility
11 includes a large silo used for storing flyash.

12 III

13 On May 1, 1979, Pozzolanic Northwest, Inc. made a delivery of
14 flyash to appellant's silo. Such deliveries are recurring events.
15 Appellant's plant operator, the only person stationed at the plant,
16 made no effort to reconcile the amount delivered with the available
17 capacity of the silo. The available capacity of the silo is known to
18 the operator at any given time by comparison of input and output records.

19 Appellant contends that 30 tons of flyash were ordered, but 33.2
20 tons were actually delivered into the silo on the day in question.
21 Because of this, the silo was filled beyond its capacity causing the
22 seal on a hatch atop the silo to rupture. Flyash emissions resulted,
23 aggregating at least 10 minutes in one hour and of an opacity of 60%.

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IV

Respondent's inspector, on routine patrol, observed and recorded the above emissions then went directly to the plant. Appellant's Vice-President arrived, coincidentally, when the inspector did. The two persons discussed the incident along with appellant's plant operator and a Notice of Violation was issued. Appellant later received a Notice and Order of Civil Penalty citing violation of respondent's Section 9.03(b) of Regulation I and assessing a \$250 civil penalty. From this appellant appeals.

V

Appellant has no prior record of violating respondent's regulations. The plant operator is now instructed to ascertain the amount of flyash proposed for delivery, on site, prior to commencement of a delivery.

VI

Any Conclusion of Law hereinafter stated which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings the Pollution Control Hearings Board comes to these

CONCLUSIONS OF LAW

I

Section 9.03(b) of respondent's Regulation I makes it unlawful to "cause or allow" an emission such as occurred here. Appellant contends that Pozzolan's delivery exceeded the amount of flyash ordered and therefore caused the emission. While this may be so, appellant's

PROPOSED FINDINGS OF FACT,
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1 failure to reconcile, on site, the amount being delivered with its
2 available silo capacity also caused or allowed the emissions.

3 In causing or allowing emission of an air contaminant, flyash, for
4 more than three minutes in any one hour, which contaminant is of an
5 opacity obscuring an observer's view to a degree equal to or greater
6 than does smoke designated as No. 1 on the Ringlemann Chart, appellant
7 violated Section 9.03(b) of respondent's Regulation I.

8 II

9 Because appellant has not previously violated respondent's
10 regulations and because its plant operator now ascertains, on site, the
11 amount of flyash proposed for delivery for comparison to available silo
12 capacity, the penalty should be partially suspended.

13 III

14 Any Finding of Fact which should be deemed a Conclusion of Law
15 is hereby adopted as such.

16 Therefore, the Pollution Control Hearings Board issues this

17 ORDER

18 The \$250 civil penalty is affirmed, provided however, that one
19 half of the penalty is suspended on condition that appellant not violate
20 respondent's Regulations for a period of one year from the date of
21 appellant's receipt of this Order.

22 DONE at Lacey, Washington this 31st day of October 1979.

23 POLLUTION CONTROL HEARINGS BOARD

24 
25 WILLIAM A. HARRISON
26 Presiding Officer

27 PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER